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December 5, 2006

FILED ELECTRONICALLY AND ORIGINAL VIA 1ST CLASS MAIL SERVICE

The Honorable Charles L.A. Terreni
Chief Clerk
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

RE: Application of Wyboo Plantation Utilities, Inc. for Approval of New
Schedule of Rates and Charges for Water and Sewer Services
Docket No. 2005-13-WS, ELS File No. 1015-10306

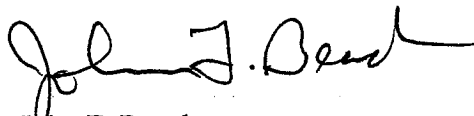
Dear Mr. Terreni:

Enclosed for filing please find the original and one copy (1) copy of the **Reply of Wyboo Plantation Utilities, Inc.** for filing in the above-referenced docket. By copy of this letter, I am serving all parties of record in this proceeding and enclose my certificate of service to that effect.

Please stamp "received" the additional copy of this letter, and return in the enclosed envelope.

With kind regards, I am

Yours truly,



John F. Beach

JB/cr

cc: all parties of record
Mr. Mark Wrigley

THIS DOCUMENT IS AN EXACT DUPLICATE OF THE E-FILED COPY SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH ITS ELECTRONIC FILING INSTRUCTIONS.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2005-13-W/S

IN RE:

Application of Wyboo Plantation
Utilities, Inc. for adjustment of rates and
charges for the provision of water and
sewer service

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**REPLY OF WYBOO PLANTATION
UTILITIES, INC.**

Wyboo Plantation Utilities, Inc. (“Wyboo”) herein Replies to the documents filed by the Wyboo Plantation Owners Association, Inc. (the “POA”) and The Villas of Wyboo Owners Association, Incorporated (the “Villas of Wyboo”) in opposition to Wyboo’s Motion to Present the Pre-Filed Testimony (the “Testimony”) of Joe Maready at the Hearing in this Docket (the “Motion”).

Introduction

The POA and the Villas of Wyboo argue that allowing the Testimony to be presented without the provision of cross-examination would be prejudicial, a denial of due process, and beyond the authority of the Commission. None of these assertions is correct. 1) The Commission has the authority to allow the Testimony into the record; and 2) Doing so will not prejudice or harm the procedural rights of any party in this Docket.

The Commission Has the Authority to Allow the Testimony Into the Record

Contrary to the assertions of the POA, it is well within the Commission’s statutory authority to allow the Testimony into the record. The admission of evidence in this contested case at the “trial” level is within the sound discretion of the Commission. *See, e.g. Peterson v. National*

Railroad Passenger Corporation, 618 S.E.2d 903, 907 (2005). The Commission's Rules expressly allow the Commission to use its discretion in applying the Rules of Evidence in a manner consistent with *its own* determination of the public interest. As conceded by the Villas at Wyboo, the Commission has the power to grant a waiver of Rule 103-870 (regarding application of the South Carolina Rules of Evidence), just as it can waive Rule 103-869 (and its requirement that witnesses be sworn), in appropriate circumstances.

Those circumstances exist here. The same arguments Wyboo made in its Motion seeking the grant of a waiver of 103-869 support a waiver of 103-870: Wyboo has demonstrated (without argument to the contrary) that compliance with the Rule would cause not only "undue hardship or difficulty," but in fact would be impossible. Wyboo has further shown that 1) accounting testimony is an absolute necessity in this rate case, 2) it is practically impossible for Wyboo to substitute another witness, 3) failure to admit Mr. Maready's testimony would result in an extraordinary waste of resources, and 4) allowing this testimony would actually serve the public interest of the other parties in this Docket. All of this strongly supports allowing the Testimony into the record.

Even if the strict application of Rule 103-870 urged by the POA is undertaken by the Commission, (which is unnecessary since the Commission need rely only on Wyboo's waiver request), Rule 103-870 gives the Commission the explicit authority to allow the Testimony to become evidence. Rule 103-870(A) provides, in part: "Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, *any part of the evidence may be received in written form.*" Allowing the Testimony (in its prefiled written form) to go into evidence will undoubtedly expedite the hearing in this matter.

In addition, no party will be prejudiced by the admission of the Testimony. The Testimony has been prefiled with the Commission, informing the parties of the substance of the Testimony, and perhaps more importantly giving parties an opportunity to respond thereto. In other words, no party will be prejudiced by admission of the Testimony because of 1) each party's opportunity to be heard in this Docket (and their exercise of that opportunity) as is more fully described below; and 2) the additional procedural proposals made by Wyboo in the Motion.

Allowing the Testimony into the Record
Will Not Violate the Due Process Rights of Any Party

Contrary to the assertions of the POA, the due process rights of parties will not be threatened if the Testimony becomes part of the record, despite the fact that no cross-examination of Mr. Maready will take place. "Due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *South Carolina Dep't of Social Serv. v. Beeks*, 481 S.E.2d 703 (1997). Most importantly, *due process is not violated where a party is not given the opportunity to confront witnesses, so long as there has been a meaningful opportunity to be heard.* *South Carolina Dep't of Social Serv. v. Wilson*, 574 S.E.2d 730, 735 (2002).

The POA (and the Villas of Wyboo) have been afforded, and indeed have exercised, the opportunity to be heard. The Commission has provided each of these parties, and their respective members, the opportunity to provide testimony on numerous occasions. The Commission's prefiling letter gave the POA and the Villas of Wyboo the ability to sponsor one or more witnesses to testify at the hearing, and each of them have done so. Specifically, these parties were served with the Testimony, and given the explicit opportunity to respond to the Testimony by means of responsive testimony of their own. The POA has prefiled the testimony

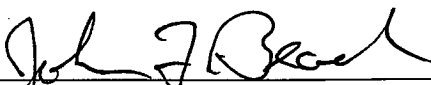
of three witnesses, one of which is a retired Certified Public Accountant. The Villas at Wyboo has prefiled the testimony of one witness, who specifically responds to Mr. Maready's prefiled testimony. In addition, numerous members of both the POA and the Villas of Wyboo provided testimony at the Public Hearing in this Docket, and will have the opportunity to do so again at the beginning of the hearing scheduled in Columbia. Furthermore, each of the objecting parties has been ably represented by counsel. As indicated in Wyboo's Motion, counsel for all parties should have the opportunity to make arguments about the substance of the Testimony.

CONCLUSION

Intervenors have not provided the Commission a compelling reason to exclude the Testimony, in view of the arguments raised Wyboo's Motion and the crucial nature of the Testimony to this case. The Commission clearly has the authority to allow the Testimony to become part of the record, and the public interest supports doing so.

WHEREFORE, for the foregoing reasons, Wyboo respectfully renews its request that the Commission allow the prefiled Direct Testimony of Joe Maready to be admitted into evidence and grant Wyboo such other and further relief as the Commission determines to be just and proper.

RESPECTFULLY SUBMITTED this 5th day of December, 2006.


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Columbia, SC
December 5, 2006

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
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DOCKET NO. 2005-13-W/S**

IN RE:

Application of Wyboo Plantation
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sewer service

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day, one (1) copy of the **Reply of Wyboo Plantation Utilities, Inc.** via electronic mail service and by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

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December 5, 2006
Columbia, South Carolina